Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Dutton	Analyst:	Jahna Alvarado	Bill Number:	SB 357
Related Bills:	See Legislative History	Telephone:	845-5683	Amended Dates:	April 4, May 10 & 31, & June 20, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: State Agency Regulations/Revenue Lost Or Gained From Regulation That Renders Equipment Obsolete/FTB To Provide Average Tax Rate To State Air Resources Board

SUMMARY

Under the Health and Safety Code, this bill would require the Franchise Tax Board (FTB) to periodically provide the average tax rate to be used by the State Air Resources Board (SARB) in that agency's regulatory process.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The April 4, 2011, amendments removed all of the existing provisions of this bill and replaced them with language that would require a state agency seeking to make a regulatory change that would render equipment obsolete to provide an estimate of the revenue loss to the state that would result from the regulatory change.

The May 10, 2011, amendments modified the reporting requirement by requiring that a revenue estimate be provided regardless of whether the regulatory change would result in an estimated revenue loss or gain.

The May 31, 2011, amendments removed existing provisions of this bill and added language that would require the SARB to include an estimate of the revenue loss or gain to the state as a result of regulatory action that could render depreciable equipment obsolete.

The June 20, 2011, amendments changed the Health and Safety Code provision that would be added to the code and would limit the application of the bill to certain regulatory action taken by the SARB with regard to diesel-fueled heavy-duty on-road or off-road motor vehicles.

As a result of the May 31 and June 20, 2011, amendments, the analysis of SB 357 as introduced February, 15, 2011, no longer applies.

Board Position:			Executive Officer	Date
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PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to improve the state's economic analysis of regulations as well as draw attention to regulations that render equipment obsolete before the equipment has been fully depreciated.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2012, and would apply to regulations promulgated by the SARB on or after that date.

ANALYSIS

FEDERAL/STATE LAW

Current state law allows a state agency to adopt, amend, or repeal regulations (every rule, regulation, order or standard of general application) and provides procedures by which the agency may adopt, amend, or repeal the regulation, including Office of Administrative Law (OAL) review.

Under current law, a state agency is required to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of each regulation. The statement of reasons may include facts, evidence, documents, testimony, or other evidence upon which the state agency relies to support the declaration that the regulatory action will not have a significant adverse economic impact on business. Further, all state agencies are required to assess the impact of the proposed action on businesses in the state.

Existing state and federal laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life.

Obsolescence may render an asset economically useless to a taxpayer regardless of its physical condition. Obsolescence may be attributable to a number of causes, including technological improvements, reasonably foreseeable economic changes, and legislative or regulatory action that prohibits or otherwise limits use of the property for its intended purpose. For example, property that would be unable to meet the requirements of new air quality regulations could be rendered obsolete prior to the end of its estimated useful life. When property becomes obsolete, the property's estimated useful life would be revised and the remaining basis would be deducted over the revised useful life. In the case of property with no remaining useful life, 100 percent of the remaining basis would be deductible in the year of obsolescence.

THIS BILL

Under the Health and Safety Code, this bill would require the SARB to include an estimate of the revenue gain or loss to the state as a result of a regulation adopted or amended by the SARB imposing requirements relating to diesel-fueled heavy-duty on-road or off-road motor vehicles that make equipment obsolete that would otherwise have a remaining depreciable life.

The FTB would be required to provide to the SARB, and update every five years, the average tax rate to be used in determining the required estimated revenue gain or loss.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

It is unclear what the term "average tax rate" would mean. For example, would the "average tax rate" mean the average tax rate paid by corporations? Or, is it the average tax rate paid by all business entities, e.g. sole proprietorships, corporations, partnerships, limited liability companies?, The author may wish to amend this bill for clarity. For example, for ease of administration, the corporate tax rate could be used to determine the estimated revenue gain or loss that this bill would require.

The bill is silent on the initial date that the average tax rate would be due to the SARB. Additionally, as a result of the unspecified initial due date, the due dates for the subsequent updates, due every five years, are unspecified. The author may wish to amend this bill to avoid confusion.

LEGISLATIVE HISTORY

ABX1 3 (Logue, 2011/2012) would require a state agency to review and report on all regulations that it adopts or amends on or after January 1, 2012. This bill is currently in the Assembly.

ABX1 4 (Logue, 2011/2012) would change the date a regulation is effective. This bill is currently in the Assembly.

ABX1 5 (Logue, 2011/2012) would require that notice of proposed action be submitted to the Legislature as specified. This bill is currently in the Assembly.

ABX1 6 (Logue, 2011/2012) would mandate the Department Of Finance to update instruction for inclusion in the State Administrative Manual the methods used for determination, estimates, statements and findings. This bill is currently in the Assembly.

AB 1822 (Wayne, Stats. 2000, Ch. 1060) made various changes to the laws governing regulatory procedures.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

The *Michigan* Administrative Procedures Act requires that the regulatory impact statement required to be filed for each proposed rule change include an estimate of the increase in revenues to a state or local governmental unit.[1]

Review of the Administrative Procedures Act for *Florida*, *Illinois, Massachusetts, Minnesota*, and *New York* found no comparable requirement for inclusion of an estimated impact to the state's revenues in these states' regulatory processes.

FISCAL IMPACT

Using available data, the FTB could calculate an average tax rate at no additional cost to the department.

If this bill is amended to define "average tax rate," the department's costs could be impacted. For example, if the definition would require the department to obtain data that is currently unavailable, there could be costs to obtain that data. Because it is impractical to predict what amendments, if any, may be made, the potential cost is unable to be determined.

ECONOMIC IMPACT

Because current law with regard to the depreciation deduction allowed due to obsolescence would be unaffected by the provisions of this bill, this bill would not impact the state's income tax revenues.

SUPPORT/OPPOSITION

Support: California Association of Bed and Breakfast Inns,
California Building Industry Association,
California Fence Contractors' Association,
California Chapter of the American Fence Association,
California Hotel & Lodging Association,
California Manufacturers & Technology Association,
California Retailers Association,
Engineering Contractors' Association,
Engineering & Utility Contractors Association,
Flasher Barricade Association,
Marin Builders' Association,
McGuire and Hester, and
Western Growers.

Opposition: None provided.

[1] Section 24.245(3)(v) of the Michigan Administrative Procedures Act of 1969.

ARGUMENTS

Pro: Proponents may argue that the estimated revenue impact of accelerated depreciation deductions that could result from a proposed regulatory action would assist in analyzing the proposed action.

Con: Opponents may argue that the estimated revenue impact of accelerated depreciation deductions resulting from a proposed regulatory action could be of limited value.

LEGISLATIVE STAFF CONTACT

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